



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.07.2017
Pronounced on : 09.03.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1086 of 2011

Arunagiri

.. Petitioner / Appellant

Vs.

The Managing Director,
Tamilnadu State Transport Corporation,
Trichy.

...Respondent / Respondent.

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order dated 27.07.2010 made in M.C.O.P.No.852 of 2005 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Tiruchirapalli.

For Appellant :Mr.A.Hajamohideen
For Respondent :Mr.S.C.Herold Singh

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Claimant against the order dated 27.07.2010 made in M.C.O.P.No.852 of 2005 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Tiruchirapalli. The claimant before the Court below is the appellant herein. For the sake of convenience, he is referred to as appllant.

2. The material facts of the case is that it is a case of injury due to the accident that took place on 06.01.2005 at about 16.15 hours in Trichy - Chennai Main Road, near Bank Colony, Trichy. At the time of accident, when the petitioner was walking from north to south on the left side, at that time, the bus bearing registration No. TN-45-N-1457 belonging to the respondent driven by its driver in a rash and negligent manner which came behind the petitioner and hit him. Due to the said impact, the petitioner sustained multiple injuries all over the body. Immediately, he was admitted in the Government Hospital, Srirangam and in the Government Hospital, Trichy and then privately.

3. The claimants filed an application in M.C.O.P.No.852 of 2005 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Tiruchirapalli, seeking compensation.

4. Before the Tribunal, the appellants /Claimants examined five witnesses as P.Ws.1 to 5 and marked five documents as EXS.P.1 to EX.P.5. The respondent examined two witnesses as R.W.1 and R.W.2 and marked two documents as Ex.R.1 and Ex.R.2.



5. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the claimants and respondents and also appreciating the evidence on record, held that the transport Corporation is not liable to pay any compensation and dismissed the appeal and awarded no compensation. Against which, the appellant has filed this present appeal .

6. The learned counsel appearing for the appellant Company contended that the Tribunal was not justified in brushing aside the witness marked before the Tribunal. Further, the Court below failed to appreciate the crucial evidence of P.W.5 who had geographically narrated the incident, still, the court below negated the claim of the appellant and therefore, he prays for appropriate orders.

7. Per contra, the learned counsel for the respondents contented that the Tribunal on appreciation of oral and documentary evidence found that the appellant was not eligible to claim compensation and the same does not require interference and hence, this appeal is to be dismissed.

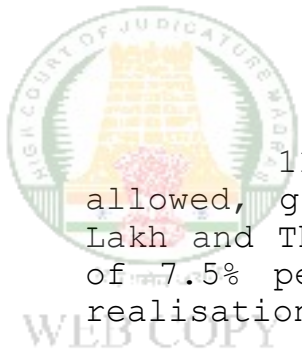
8. Heard the learned counsel appearing on both sides and perused the materials available on record.

9. As rightly pointed out by the learned counsel appearing for the appellant at page No.17, one Rajamanickam, who was examined as P.W.5, had geographically narrated the occurrence took place on that fateful day, who is an eye witness of the accident. In his deposition, he specifically deposed that after the incident the driver of the offending vehicle stopped the bus about 100 feet from the accident spot and he himself had given the bus number in writing to the said Rajamanickam and left the spot. However, the tribunal failed to appreciate such crucial evidence and came to the conclusion that the appellant failed to prove the offending vehicle. In a situation of this nature, the tribunal should take a holistic view. It is necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimant. The claimant is merely to establish his case on the touchstone of preponderance of probability. In the case on hand, the standard of proof beyond reasonable doubt could not be applied. Further, the transport Corporation originally filed a counter affidavit stating though the driver of the bus drove the vehicle in a careful manner, because of the negligence on the part of the appellant, the accident had taken place. But for the reason known to them, in the additional counter affidavit they denied the accident itself and they are not liable to pay compensation. Unfortunately, the Court below proceeded with the version of the transport Corporation without appreciating the evidence on record. The accident took place on 06.01.2005 and the transport Corporation filed its counter affidavit only on 24.09.2008 and they filed additional counter affidavit on 22.06.2009. They actually consumed nearly four years to file a counter affidavit and

ultimately, denied the entire accident itself. Nothing prevented the transport Corporation from verifying their own records, namely, invoice and other records and present the counter affidavit. After filing the counter affidavit, they cannot improve their version by filing an additional counter affidavit, that too, denying the accident itself. Such inordinate and huge delay will take away the rights of the claimant and he may not be in a position to prove his claim. The beneficial or welfare statutes should be given a liberal approach and not literal approach by the tribunal. That apart, it is well known fact that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal case. The Court below must keep this distinction in mind. Therefore, the finding of the tribunal that the vehicle of the transport corporation is not involved in the accident in question is set aside and this Court is of the considered view that the appellant herein is entitled for the compensation.

10. Coming to the quantum of compensation, the Doctor-P.W.2, after examining the appellant gave a disability certificate to the effect that the appellant suffered 44% disability. The Doctor, in his deposition annexed at page No.10 of the typed set of papers, categorically explained the manner in which the appellant has suffered the disability. He took treatment from 06.01.2005 to 08.01.2005 and on 17.11.2008, as on outpatient, in the government hospital, which is marked as Ex.A.3. At the time of the accident, as per the claim petition, he was earning a sum of 15/- per day and therefore, this Court is of the considered view that considering his disability and his loss of income and treatment taking privately by the appellant, this Court fixes a sum of Rs.1,00,000/- as compensation towards loss of income. Definitely, he could have spent some amount towards medical expenses, for which, a sum of Rs..10,000/- is given towards medical expenses and for pain and suffering a sum of Rs.10,000/- is awarded and for nutrition Rs.5,000/- is awarded and for damaged clothes and articles Rs.5,000/- is awarded and for attendant and transport charges a sum of Rs.5,000/- is award. To sum up, the appellant is entitled for the following amounts:-

S1. No.	Description	Amount
1.	Loss of income	Rs.1,00,000/-
2.	Medical expenses	Rs.10,000/-
3.	Pain and suffering	Rs.10,000/-
4.	Nutrition	Rs.5,000/-
5.	Clothes and articles	Rs.5,000/-
6.	Attendant and transport charges	Rs.5,000/-
		Rs.1,35,000/-



11. In the result, this Civil Miscellaneous Appeal is allowed, granting compensation amount of Rs.1,35,000/- (Rupees One Lakh and Thirty five Thousand Only) along with interest at the rate of 7.5% per annum from the date of claim petition till date of realisation and proportionate costs;

12. The transport Corporation is directed to deposit the entire award amount namely, Rs.1,35,000/- along with accrued interest and costs, to the credit of M.C.O.P.No.852 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub-Judge, Trichy, within a period of four weeks from the date of receipt of a copy of this judgment;

13. On such deposit made by the transport Corporation, the Tribunal is directed to transfer the entire award amount, namely, Rs.1,35,000/- (Rupees One Lakh Thirty Five Thousand only) along with accrued interest and costs directly to the Personal Savings Bank Account Number of the appellant-claimant, through RTGS/NEFT system, after getting his Account Details, within a period of two weeks, thereafter; and in the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To
The Motor Accident Claims Tribunal,
(Subordinate Judge), Tiruchirapalli.

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+1CC to Mr.S.C.Herold Singh, Advocate, SR.No. 54094

order made in
C.M.A(MD)No.1086 of 2011
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AM/KKR/SAR 3/26.04.2018/2P/6C